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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/830,001	04/23/2004	Michaela Kohut	P25129	7651
7055	7590	06/27/2008	EXAMINER	
GREENBLUM & BERNSTEIN, P.L.C. 1950 ROLAND CLARKE PLACE RESTON, VA 20191				BROOKS, KRISTIE LATRICE
ART UNIT		PAPER NUMBER		
1616				
NOTIFICATION DATE			DELIVERY MODE	
06/27/2008			ELECTRONIC	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

gbpatent@gbpatent.com  
pto@gbpatent.com

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/830,001	KOHUT ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	KRISTIE L. BROOKS	1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 09 May 2008.  
 2a) This action is **FINAL**.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-46 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-46 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) 1-46 are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO/SB/08)  
 Paper No(s)/Mail Date 12/19/07;2/6/06;1/7/05;10/8/04.

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_.  
 5) Notice of Informal Patent Application  
 6) Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election of Group I, claims 1-36 and 45-46 in the reply filed on May 9, 2008 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).
2. Upon further consideration, the Examiner has rejoined Groups II, and V-VII, claims 37 and 40-44.
3. Claims 38-39 have been withdrawn from further consideration as being drawn to the non-elected invention.

### ***Status of Application***

4. Claims 1-46 are pending.

### ***Priority***

5. Acknowledgment is made of applicant's claim for foreign priority under 35 U.S.C. 119(a)-(d).

### ***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. Claims 1-22, 25-34, 36-37 and 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Touzan et al. (US 6,210,656).

Applicant claims a cosmetic or dermatological cleansing emulsion comprising: (a) from about 2 % to about 17 % by weight of at least one of sodium laureth sulfate and sodium myreth sulfate; (b) from about 0.20 % to about 0.74 % by weight of one or more polyacrylates selected from anionic homopolymers and anionic copolymers of at least one of acrylic acid, an alkylated acrylic acid and esters thereof; (c) from about 42 % to about 51% by weight an oil phase comprising (i) from about 25 % to about 50 % by weight of a paraffin oil, (ii) from about 0.5 % to about 25 % by weight one or more oils having a polarity of from about 5 to about 50 mN/m;

#### **Determination of the scope and content of the prior art**

##### **(MPEP 2141.01)**

Touzan et al. teach a self-foaming composition in the form of a pressurized oil-in-water emulsion comprising (a) up to 50% by weight of a fatty phase comprising at least

one cosmetic oil such as soybean oil, hydrocarbon oils such as paraffin liquid, and silicone oils, (b) 0.1-2% of a gelling system comprising crosslinked homopolymers formed for at least one cationic or anion monomers and crosslinked copolymers, such as (meth)acrylic acid, (meth)acrylate, and (c) water (see the abstract, column 3 lines 20-27, column 5 lines 13-44 and 47-52). The compositions can also comprise one or several surfactants, such as sodium laureth sulfate, in an amount of 0-2% and active agents in the amount of 0.01 to 10% by weight (see column 4 lines 57-61). The compositions are useful for cleansing the skin and or hair and may be used as a foam bath and shower products.

**Ascertainment of the difference between the prior art and the claims****(MPEP 2141.02)**

Touzan et al. teach an emulsion composition that can contain up to 50% of an oil phase, wherein the oil phase comprises paraffin oils and one or more oils of a polarity of about 5-50mNm, but do not teach the instantly claimed amount of paraffin oil and one or more oils of a polarity of about 5-50mNm in the oil phase.

**Finding of prima facie obviousness****Rational and Motivation (MPEP 2142-2143)**

One of ordinary skill in the art would have been motivated to make a cosmetic or dermatological cleansing emulsion comprising from about 42 % to about 51% by weight of an oil phase that contains (i) from about 25 % to about 50 % by weight of a paraffin

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oil, and (ii) from about 0.5 % to about 25 % by weight of one or more oils having a polarity of from about 5 to about 50 mN/m because Touzan et al. suggests the oil phase in an amount of up to 50% by weight of the final composition, wherein the oil phase contains paraffin oils and one or more oils having a polarity of from about 5 to about 50 mN/m (i.e. soybean oil, silicone oils, etc).

Thus, it would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to make a cosmetic or dermatological cleansing emulsion comprising from about 42 % to about 51% by weight of an oil phase that contains (i) from about 25 % to about 50 % by weight of a paraffin oil, and (ii) from about 0.5 % to about 25 % by weight of one or more oils having a polarity of from about 5 to about 50 mN/m due to process optimization, in which one of ordinary skill in the art would vary the amount of oil that is necessary to achieve the optimum cleansing foam.

With regards to the limitation, “the emulsion having the viscosity of from about 500 to about 3,500 mPas at 100s<sup>-1</sup>” recited in claim 1, it is the Examiners position that since the composition taught in the prior art contains the same components as instantly claimed, the composition will possess this property, especially in absence of evidence to the contrary.

Therefore, the claimed invention would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made because the prior art is fairly suggestive of the instant composition.

8. Claim 45 is rejected under 35 U.S.C. 103(a) as being unpatentable over Touzan et al. (US 6,210,656).

Applicant claims a method of cleansing the skin comprising the application of the product of claim 1 onto the skin.

**Determination of the scope and content of the prior art**

**(MPEP 2141.01)**

Touzan et al. teach a self-foaming composition in the form of a pressurized oil-in-water emulsion comprising (a) up to 50% by weight of a fatty phase comprising at least one cosmetic oil such as soybean oil, hydrocarbon oils such as paraffin liquid, and silicone oils, (b) 0.1-2% of a gelling system comprising crosslinked homopolymers formed for at least one cationic or anion monomers and crosslinked copolymers, such as (meth)acrylic acid, (meth)acrylate, and (c) water (see the abstract, column 3 lines 20-27, column 5 lines 13-44 and 47-52). The compositions can also comprise one or several surfactants, such as sodium laureth sulfate, in an amount of 0-2% and active agents in the amount of 0.01 to 10% by weight (see column 4 lines 57-61). The compositions are useful for cleansing the skin and or hair and may be used as a foam bath and shower products.

**Ascertainment of the difference between the prior art and the claims**

**(MPEP 2141.02)**

Touzan et al. teach the cleansing emulsions are useful for cleansing the skin but do not exemplify application to the skin.

**Finding of prima facie obviousness**

**Rational and Motivation (MPEP 2142-2143)**

One of ordinary skill in the art would have been motivated to apply a cleansing emulsion comprising a mixed surfactant system which comprises (i) an anionic surfactant, such as, alkyl sulfates (i.e. sodium laureth sulfate, sodium myreth sulfate, etc.) and (ii) an amphoteric surfactant system, an oil phase containing hydrocarbons such as mineral oils and petroleum, and triglycerides, such as, almond oil, and soybean oil , water and polyacrylates to the skin because Touzan et al. teach the instant components in a cleansing emulsion that is useful for cleansing the skin.

Thus, it would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to apply the instant emulsion to the skin for the purpose of cleaning the skin.

With regards to the limitation, “the emulsion having the viscosity of from about 500 to about 3,500 mPas at 100s<sup>-1</sup>” recited in claim 1, it is the Examiners position that since the composition taught in the prior art contains the same components as instantly claimed, the composition will possess this property, especially in absence of evidence to the contrary.

Therefore, the claimed invention would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made because the prior art is fairly suggestive of the instant composition.

9. Claims 1-25, 28-34, 36-37 and 40-44 and 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Giret et al. (US 5,776,872).

Applicant claims a cosmetic or dermatological cleansing emulsion comprising: (a) from about 2 % to about 17 % by weight of at least one of sodium laureth sulfate and sodium myreth sulfate; (b) from about 0.20 % to about 0.74 % by weight of one or more polyacrylates selected from anionic homopolymers and anionic copolymers of at least one of acrylic acid, an alkylated acrylic acid and esters thereof; (c) from about 42 % to about 51% by weight an oil phase comprising (i) from about 25 % to about 50 % by weight of a paraffin oil, (ii) from about 0.5 % to about 25 % by weight one or more oils having a polarity of from about 5 to about 50 mN/m;

#### **Determination of the scope and content of the prior art**

##### **(MPEP 2141.01)**

Giret et al. teach a cleansing emulsion comprising (a) from about 5% to 50% of a mixed surfactant system which comprises (i) from about 1% to about 20% by weight of an anionic surfactant, such as, alkyl sulfates (i.e. sodium laureth sulfate, sodium myreth sulfate, etc.) and (ii) from about 1 to 20% of an amphoteric surfactant system, (b) from about 3% to about 40% of an oil phase containing hydrocarbons such as mineral oils

and petroleum, and triglycerides, such as, almond oil, and soybean oil and (c) water, wherein the weight ratio of the surfactant:oil is in the range of 10:1 to about 1:3 (see the abstract, column 2 lines 48-67, column 3 lines 11-31, and column 5 lines 21-57). The composition also contains 0.01 to about 5% of anionic polymers such as cross-linked polymers of acrylic acid (see column 10 lines 18-27). The viscosity of the emulsion is preferably at least 1000cps (~1000mPas) (see column 10 lines 28-45).

**Ascertainment of the difference between the prior art and the claims  
(MPEP 2141.02)**

Giret et al. teach an emulsion composition that can from 3% to about 40% of an oil phase, wherein the oil phase comprises paraffin oils and one or more oils of a polarity of about 5-50mNm, but do not teach the instantly claimed amount of paraffin oil and one or more oils of a polarity of about 5-50mNm in the oil phase.

**Finding of prima facie obviousness**

**Rational and Motivation (MPEP 2142-2143)**

One of ordinary skill in the art would have been motivated to make a cosmetic or dermatological cleansing emulsion comprising from about 42 % to about 51% by weight of an oil phase that contains (i) from about 25 % to about 50 % by weight of a paraffin oil, and (ii) from about 0.5 % to about 25 % by weight of one or more oils having a polarity of from about 5 to about 50 mN/m because Giret et al. suggests the oil phase in an amount of up to about 40% by weight of the final composition, wherein the oil phase

contains paraffin oils and one or more oils having a polarity of from about 5 to about 50 mN/m (i.e. soybean oil, almond oil, etc).

Thus, it would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to make a cosmetic or dermatological cleansing emulsion comprising from about 42 % to about 51% by weight of an oil phase that contains (i) from about 25 % to about 50 % by weight of a paraffin oil, and (ii) from about 0.5 % to about 25 % by weight of one or more oils having a polarity of from about 5 to about 50 mN/m due to process optimization, in which one of ordinary skill in the art would vary the amount of oil that is necessary to achieve the optimum cleansing foam.

It is noted that Giret et al. teach about 40% of an oil phase whereas Applicant claims "about 42%". However, Applicant uses "about" language in the instant claim. Applicant has not defined what amounts are encompassed by the term "about" and thus it is the Examiners position that the amount taught by Giret et al. meets the instant limitation of "about 42%".

Therefore, the claimed invention would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made because the prior art is fairly suggestive of the instant composition.

10. Claim 45 is rejected under 35 U.S.C. 103(a) as being unpatentable over Giret et al. (US 5,776,872).

Applicant claims a method of cleansing the skin comprising the application of the product of claim 1 onto the skin.

**Determination of the scope and content of the prior art**

**(MPEP 2141.01)**

Giret et al. teach a cleansing emulsion that are useful for cleansing the skin and or hair and may be used as a foam bath and shower products comprising (a) from about 5% to 50% of a mixed surfactant system which comprises (i) from about 1% to about 20% by weight of an anionic surfactant, such as, alkyl sulfates (i.e. sodium laureth sulfate, sodium myreth sulfate, etc.) and (ii) from about 1 to 20% of an amphoteric surfactant system, (b) from about 3% to about 40% of an oil phase containing hydrocarbons such as mineral oils and petroleum, and triglycerides, such as, almond oil, and soybean oil and (c) water, wherein the weight ratio of the surfactant:oil is in the range of 10:1 to about 1:3 (see the abstract, column 2 lines 48-67, column 3 lines 11-31, and column 5 lines 21-57). The composition also contains 0.01 to about 5% of anionic polymers such as cross-linked polymers of acrylic acid (see column 10 lines 18-27). The viscosity of the emulsion is preferably at least 1000cps (~1000mPas) (see column 10 lines 28-45).

**Ascertainment of the difference between the prior art and the claims**

**(MPEP 2141.02)**

Giret et al. teach the cleansing emulsions are useful for cleansing the skin and/or hair but do not exemplify application to the skin.

### **Finding of *prima facie* obviousness**

#### **Rational and Motivation (MPEP 2142-2143)**

One of ordinary skill in the art would have been motivated to apply a cleansing emulsion comprising a mixed surfactant system which comprises (i) an anionic surfactant, such as, alkyl sulfates (i.e. sodium laureth sulfate, sodium myreth sulfate, etc.) and (ii) an amphoteric surfactant system, an oil phase containing hydrocarbons such as mineral oils and petroleum, and triglycerides, such as, almond oil, and soybean oil , water and polyacrylates to the skin because Giret et al. teach the instant components in a cleansing emulsion that is useful for cleansing the skin.

Thus, it would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to apply the instant emulsion to the skin for the purpose of cleaning the skin or hair.

It is noted that Giret et al. teach about 40% of an oil phase whereas Applicant claims "about 42%". However, Applicant uses "about" language in the instant claim. Applicant has not defined what amounts are encompassed by the term "about" and thus it is the Examiners position that the amount taught by Giret et al. meets the instant limitation of "about 42%".

Therefore, the claimed invention would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made because the prior art is fairly suggestive of the instant composition.

***Conclusion***

7. No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KRISTIE L. BROOKS whose telephone number is (571)272-9072. The examiner can normally be reached on M-F 8:30am-6:00pm Est..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann R. Richter can be reached on (571) 272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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*/Johann R. Richter/*

***Supervisory Patent Examiner, Art Unit 1616***